

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION TO ESTABLISH DOCKET)	
TO CONSIDER AMENDMENTS TO)	CASE NO. 2004-00427
INTERCONNECTION AGREEMENTS)	
RESULTING FROM CHANGES OF LAW)	

**AT&T KENTUCKY'S MOTION
FOR RECONSIDERATION AND CLARIFICATION**

Pursuant to KRS § 278.400, BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky (“AT&T Kentucky”), respectfully requests that the Kentucky Public Service Commission (“Commission”) reconsider or clarify three aspects of its *Order* dated December 12, 2007. Specifically, AT&T Kentucky respectfully requests for the Commission to reconsider its commingling ruling (Issue 14) and reconsider the time period for the parties to submit any pricing true-up related disputes arising out of the implementation of the Commission’s *Order* (Ordering Clause # 4). Finally, AT&T Kentucky respectfully requests for the Commission to clarify that it approved AT&T Kentucky’s unimpaired wire center list (Issue 5).¹

STANDARD FOR RECONSIDERATION

KRS § 278.400 allows any party to apply for rehearing (or reconsideration) with respect to “any of the matters” determined by the Commission. The primary purpose of rehearing (or reconsideration) is for the Commission to consider an order in light of alleged errors and omissions. See *Adjustment of the Rates of Kentucky-American*

¹ AT&T Kentucky reserves all rights to seek judicial review of any aspect of the Commission’s *Order*, including matters not addressed in this motion.

Water Company, Case No. 2000-120 (Feb. 26, 2001). The Commission, in construing KRS § 278.400, has determined that “the administrative agency retains full authority to reconsider or modify its order during the time it retains control over any question under submission to it.” *Kentucky Power Company*, Case No. 7489 (Jun. 27, 1980). Further, the Commission has determined that it can reconsider an order based upon evidence adduced at the initial hearing or new evidence presented at rehearing. See *Adjustment of the Rates of Kentucky-American Water Company*, Case No. 2000-120 (Feb. 26, 2001). AT&T Kentucky seeks reconsideration and/or clarification of the following aspects of the *Order*:

Issue 14: Commingling: *What is the scope of commingling allowed under the FCC’s rules and orders and what language should be included in Interconnection Agreements to implement commingling (including rates)?*

AT&T Kentucky respectfully requests for the Commission to reconsider its commingling decision.² By requiring AT&T Kentucky to commingle elements offered pursuant to § 271 of the Telecommunications Acts of 1996 (the “Act”) – such as switching -- with unbundled network elements (“UNEs”) offered pursuant to § 251 of the Act, the Commission is essentially resurrecting UNE-P. The recreation of UNE-P is inappropriate and completely contrary to the findings of the Federal Communications Commission (“FCC”) in its *Triennial Review Remand Order* (“TRRO”) wherein the FCC made clear that there is “no section 251 unbundling requirement for mass market local circuit switching nationwide.”³ Indeed, in the companion generic docket pending in Tennessee, the Tennessee Regulatory Authority (“TRA”) recently ruled that AT&T Tennessee had no obligation to “commingle UNEs or UNE combinations with any

² *Order* at 12-16.

³ *Order on Remand, In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 20 FCC Rcd 2533 (2005) at ¶ 199.

service, network element or other offering that it is obligated to make available pursuant to Section 271 of the Act.”⁴ In so ruling, the TRA correctly noted that “[i]f BellSouth is required to commingle a Section 251 local loop with Section 271 unbundled local switching, the result would be the equivalent of UNE-P, which is the type of arrangement the FCC has said BellSouth must no longer provide.”⁵

It is respectfully submitted that the Commission should reconsider its commingling ruling in light of the recent TRA ruling; adopt the reasoning of the TRA on this issue; and issue an Order that adopts AT&T Kentucky’s position and proposed contract language for commingling.⁶

Issue 5: Unimpaired Wire Centers: (a) Does the Commission have the authority to determine whether or not BellSouth’s application of the FCC’s Section 251 non-impairment criteria for high-capacity loops and transport is appropriate? (b) What procedures should be used to identify those wire centers that satisfy the FCC’s Section 251 non-impairment criteria for high-capacity loops and transport? (c) What language should be included in agreements to reflect the procedures identified in (b)?

In its Order, the Commission appeared to accept AT&T Kentucky’s (then known as BellSouth) position and evidence that there are two unimpaired wire centers in Kentucky.⁷ As noted by the Commission, both unimpaired wire centers are in Louisville and are known as LSVLKYAP (Armory Place) and LSVLKYBR (Bardstown Road).⁸ Set

⁴ Order, *In re: BellSouth’s Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law*, TRA Docket No. 04-00381 (Order issued November 28, 2007) (“TRA CoL Order”) at 32.

⁵ TRA CoL Order at 32.

⁶ AT&T Kentucky acknowledges that the United States District Court for the Northern District of Florida vacated a Florida Public Service Commission commingling ruling that held that AT&T Florida was not required by federal law to combine facilities that must be provided under Section 271 with those that must be provided under Section 251. Order on PSC Appeal, *Nuvox Communications, Inc. and Xspedius Communications, Inc. v. Edgar, et al.*, Case 4:06-cv-308-SPM (June 1, 2007). That said, AT&T Kentucky disagrees with the reasoning of the District Court, and has appealed the ruling to the United States Court of Appeal for the Eleventh Circuit. No. 07-13028-F. The appeal has been fully briefed and is scheduled for oral argument on January 17, 2008.

⁷ Order at 31-33.

⁸ Order at footnote 64.

forth below is the specific information that was included in AT&T Kentucky's (then known as BellSouth) Post-Hearing Brief filed on November 22, 2005 regarding the wire centers in Kentucky that satisfy the FCC's impairment tests:

Wire Center	Total Business Lines	Transport		High Capacity Loops	
		Tier 1	Tier 2	No Impairment for DS3	No Impairment for DS1
LSVLKYAP	49,159	X		X	
LSVLKYBR	16,989	X			

As the Commission is aware, since the hearing and submission of post-hearing briefs in this matter, AT&T Inc. and BellSouth Corporation have merged. In accordance with the FCC's approval of the merger and the commitments AT&T made to the FCC, effective as of December 29, 2006, (the merger close date), the LSVLKYAP wire center was removed from non-impaired status for DS3 loops. This removal is more fully explained in Carrier Notification SN91087013, dated January 26, 2007, which is attached hereto as Exhibit 1. For the avoidance of any doubt, AT&T Kentucky respectfully requests for the Commission to clarify that (1) it concurs in AT&T Kentucky's non-impairment designation of the wire centers as described in AT&T Kentucky's Post-Hearing Brief for the period from March 11, 2005, to December 29, 2006, and (2) it concurs in AT&T Kentucky's non-impairment designation of the aforementioned wire centers, with the one exception noted for LSVLKYAP as described in Exhibit 1, effective as of December 29, 2006.

Deadline for Submitting True-Up Disputes.

In its *Order*, the Commission ordered all parties, within 45 days of the date of the *Order* (i.e., on or before January 26, 2008), to “submit for Commission review any disputes regarding the implementation of pricing determinations true-ups.”⁹ Based on experience in other states, it is respectfully submitted that the time frame ordered by the Commission is unattainable. First, AT&T Kentucky and CLECs must negotiate and execute amendments that incorporate the rulings set forth in the *Order*. The amendment process in and of itself will likely take longer than 45 days. It is only after the execution of such amendments that CLECs will begin to submit the orders that may give rise to the pricing true-up disputes contemplated by the Commission. Specifically, orders must be submitted and circuits must be converted before a definite true-up can be ascertained. In any event, because the execution of amendments and the resolution of pricing true-up issues are matters that require the agreement of all parties, and thus are matters beyond the control of AT&T Kentucky, requiring the completion of such tasks within 45 days appears arbitrary and unrealistic. Accordingly, AT&T Kentucky respectfully requests for the Commission to issue an Order that eliminates the 45 day time line for submitting pricing true-up disputes arising out of the implementation of the *Order*. If pricing true-up disputes arise, the parties may request the Commission to resolve such disputes in a timely fashion.

⁹ *Order* at 59.

CONCLUSION

For the reasons set forth herein, the Commission should grant AT&T Kentucky's Motion for Reconsideration and Clarification.

Respectfully submitted,

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